

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1128 of 2019

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.28.02.2019 in I.A.No.319 of 2016 in O.P.No.518 of 2016 on the file of the XV Additional District Judge and Sessions Judge-cum-XV Additional Metropolitan Sessions Judge-cum-III Additional Family Judge, Ranga Reddy District at Kukatpally.

2. Petitioner herein is the respondent in the said O.P., which was filed by his children represented by their mother seeking monthly maintenance as per the terms of Memorandum of Understanding(MOU) dt.04.02.2012 entered into between the petitioner and the mother of the respondents, and also seeking arrears of maintenance of Rs.11,66,972.50 paise.

3. It is the contention of the respondents that the marriage between the petitioner and the mother of the respondents was dissolved by a decree of mutual consent divorce granted on 04.02.2012 in O.P.No.839 of 2012 and a MOU was executed between the parties pursuant to which the petitioner agreed to pay Rs.1,07,000/- per month towards monthly maintenance of the respondents. It is alleged that he committed default in making payments from October, 2014 to January, 2015 and fell due a sum of Rs.11,66,972.50 paise., and so he should be directed to pay the said amount to the respondents.

4. Counter affidavit was filed in the said O.P., by the petitioner stating that the said O.P., had been filed by the mother of the respondents in connivance with her present husband and in violation of her own obligation under the said Memorandum of Understanding dt.04.02.2012. It is also alleged that the mother of the respondents had taken away the respondents from their school and kept them out of his reach in 2012 and coerced the petitioner into agreeing to the terms of the said MOU.

5. It is contended that the said MOU is hopelessly one-sided and that the mother of the respondents had severely curtailed and impeded the visitation rights, which the petitioner had towards the respondents; that as per clause(6) of the MOU the maintenance was to be paid, so long as the petitioner remains gainfully employed and is able to afford the amount, but the petitioner had faced many ups and downs in his career including being jobless. He alleged that the mother of the respondents and her present husband are both not gainfully employed and were misusing the money remitted towards the maintenance of the respondents towards their personal use; that petitioner's parents had serious illness between February, 2016 and July, 2017 and he was the caregiver at that point of time; that he was unemployed between August, 2012 and March, 2014, but still provided the maintenance which resulted in complete depletion of his life savings. He contended that he requested the mother of the respondents to decrease the quantum of maintenance to

Rs.65,000/- per month. He contended that he is dependent on his father for his living expenses; that he is provisionally employed with Dr.Redddy Laboratories between June, 2015 and May, 2016, but he resigned and started his own business and consulting practice, and he has not yet achieved financial stability. He also stated that the school, where the two girl children were being educated, waived the fee in lieu of services rendered by the petitioner and the mother of the respondents deliberately shifted them to another school in Trivendram. He also stated that their son was in his custody and the mother of the respondents has not been allowing him to meet his daughters since April, 2018.

6. Pending the O.P., respondents filed I.A.No.319 of 2016 under Section 24 of the Hindu Marriage Act, 1955 to direct the petitioner to pay Rs.11,66,972.50 paise and continue to pay as per the MOU reiterating the contents of the O.P.

7. Counter affidavit was filed by the petitioner opposing the same and reiterating the contents of the counter filed by him in the O.P.

8. On 28.02.2019, the Court below partly allowed I.A.No.319 of 2016 and directed the petitioner to pay maintenance amount of Rs.71,000/- to the twin girls from the date of presentation of the petition till main O.P. is disposed of and the arrears, after

deducting the payments which are already made, within one month.

9. Challenging the same this Revision is filed.

10. Counsel for the petitioner contends that the orders of maintenance are never final and are subject to variance if there are changed circumstances; and without considering the pleadings of the petitioner regarding his current financial status, the Court below could not have awarded the maintenance amount of Rs.71,000/- to the twin girls from the date of petition and also directed him to pay arrears.

11. Counsel for the respondents refuted the said contentions and supported the order passed by the Court below.

12. It is important to note that both parties did not adduce any evidence in the Court below. Merely on the basis of the pleadings of both sides, the Court below recorded a finding that the petitioner is able to provide maintenance as was agreed upon by him, and the twin girls are also entitled for better maintenance and best education facilities.

13. Admittedly in the O.P., one of the main reliefs sought is for payment of arrears of maintenance of Rs.11,66,972.50 paise apart from monthly maintenance of Rs.1,07,000/-.

14. When there are specific pleadings about change of circumstances of the petitioner about his loss of job and

subsequent self employment, without going into the said aspects, and without considering the contentions of the petitioner, the Court below could not have given any finding and directed whatever arrears are claimed by the respondents to be paid.

15. Therefore in my considered opinion the impugned order cannot be sustained and it is accordingly set aside remitting back the matter to the Court below. Both parties are directed to adduce evidence in support of their financial status and other factors, and the Court below shall reconsider the matter and pass order afresh uninfluenced by its observations in the impugned order or in the order passed by this Court in this order. This exercise shall be completed within a period of two (02) months from the date of receipt of a copy of this order.

16. With the above directions, this Civil Revision Petition is disposed of. No order as to costs.

17. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

20th June, 2019

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